

REMARKS

These remarks are in response to the Final Office Action mailed January 6, 2010. Claim 7 has been cancelled without prejudice to Applicants' right to prosecute the cancelled subject matter in any divisional, continuation, continuation-in-part or other application. Claims 1, 6, 13, and 26 have been amended. Support for the amendments can be found throughout the specification as originally filed (see, e.g., Figure 6 and page 21 of the examples). No new matter is believed to have been introduced.

I. OBJECTIONS TO THE OATH/DECLARATION

The Oath/Declaration stands objected to for allegedly lacking an initial next to the changes on page 3. Applicants respectfully direct the Examiner to the initials below the name, which the inventor indicates are to reflect that changes to the box in general.

II. REJECTION UNDER 35 U.S.C. §103

Claims 1, 2, 4-14 and 26-31 stand rejected under 35 U.S.C. §103 as allegedly being unpatentable over WO 92/10203 in view of U.S. Patent No. 5,455,032 and Shaw et al. Applicants respectfully traverse this rejection.

Applicants respectfully submit that the '203 application does not teach or suggest immunizing with a preparation from Streptococcus to prevent atherogenesis wherein an IgM response is produced. In fact the '203 application teaches that an IgG response is produced. This is in contrast with the present invention which demonstrates that there was no correlation with the IgG response (see paragraph [0082]). Furthermore, the Examiner is directed to Figure 6, which demonstrates that corresponding responses from IgG and IgM.

When the '203 is combined with the '032 patent the combination still fails to teach or suggest immunizing a subject with a Streptococcus preparation for preventing or treating atherogenesis wherein an IgM response is elicited.

The addition of Shaw et al. to the '203 application also do not teach or suggest using a Streptococcus preparation to treat or prevent atherogenesis or an IgM response. The Examiner is reminded that for a prima facie case of obviousness

(even under the lower standards of KSR), the references when combined must teach all the elements of Applicants' claimed invention and must provide some expectation of success. Applicants submit that because of the complexity of biological systems there is no expectation that because natural antibodies are present that react with PC and pneumococcal infections that a Streptococcal preparation would provide a method of treating or preventing atherogenesis. Applicants submit that only in hindsight (upon showing the effectiveness of the present claimed invention) could one of skill in the art have arrived at the reasoning for the present obviousness rejection.

For at least the foregoing reasons, Applicants respectfully submit that the claimed invention is non-obvious.

The Director is authorized to charge any required fee or credit any overpayment to Deposit Account Number 50-4586, please reference the attorney docket number above.

The Examiner is invited to contact the undersigned at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted,

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